IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Regular Second Appeal No. 528 of 2006.

Date of decision: 30.05.2007.

Jai Singh ….**Appellant**

Versus

Hem Singh ….**Respondent**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant: Mr.Sanjeev Kuthiala, Advocate.

For the Respondent: Mr.Dalip Sharma, Advocate.

Dev Darshan Sud,J.

The appellant-defendant has filed this appeal against the judgment and decree of the learned Additional District Judge (Presiding Officer, Fast Track Court), Solan, in case No.36FT/13 of 2005, decided on 8.9.2006, dismissing the appeal of the defendant-appellant.

Notice was issued to the respondent to put in appearance. The entire facts in controversy are not being given as the matter is being remanded to the learned District Judge for decision afresh in accordance with law.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

FAO No.499 of 2005 (arising out of the same appeal) was filed by the respondent-plaintiff against the judgment and order of the learned Additional District Judge who set aside the judgment and decree of the learned trial Court and remanded the case for decision afresh with a direction that a fresh Local Commissioner be appointed. While disposing of the appeal, this Court had directed as under:-

> *"Keeping in view the facts of the case, I do not think that it would be appropriate for me to express my views on the matter since the first Appellate Court is the last Court as far as the finding of facts are concerned. It should be for the Lower Appellate Court to consider the questions as to whether the defendant could have been permitted to raise objections to the report of the Local Commissioner after the statement was made by the counsel that no objection is sought to be filed. This was a very important issue which has not at all been considered by the lower appellate Court. Therefore, in the facts and circumstances of the case, I deem it fit and proper to set aside the judgment of the learned lower Appellate Court and to direct that he shall consider the question as to whether the defendant could have been permitted to file objections to the report of the Local Commissioner after the counsel had made a statement on*

> *5.9.2001. He, will decide the appeal in the light of his finding on this question."*

The appeal was accordingly allowed and sent back for a decision afresh. The appellant-defendant has appealed again.

I have gone through the judgment of the learned District Judge. He has not at all adverted to the question as directed by this Court. Rather the decision on the point formulated is on the basis of the pleadings of the parties.

Needless to say that the direction of this Court was peremptory unambiguous. The learned District Judge was duty bound to have answered the question as formulated and directed by this Court. In these circumstances, this appeal is allowed and the judgment and decree of appellate Court is quashed and set aside. A direction is issued that the matter will be decided afresh in terms of the directions issued by this Court in ***FAO No.499, titled: Hem Singh vs. Jai Singh***. While deciding the appeal, in addition to the question which was required to be answered in terms of the judgment which was passed by this Court, the learned appellate Court would be free to decide the appeal in any manner by taking in to consideration any other facts including the pleadings and evidence of the parties etc. The appeal is, accordingly, allowed. There shall be no order as to costs.

Parities through their counsel shall appear before the learned District Judge on ***30th June, 2007*** who will dispose of the appeal before 31st December, 2007.

May 30, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**